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Attorneys for Mr. Ramirez-Quebedo

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(HONORABLE JANIS L. SAMMARTINO)

UNITED STATES OF AMERICA,	)	CASE NO. 08CR2123-JLS
	)	
Plaintiff,	)	DATE: July 25, 2008
	)	TIME: 1:30 P.M.
v.	)	
	)	NOTICE OF MOTIONS AND
SALVADOR RAMIREZ-QUEBEDO,	)	MOTIONS TO:
	)	
Defendant.	)	1) COMPEL DISCOVERY; AND
	)	2) <u>LEAVE TO FILE FURTHER MOTIONS.</u>

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY; AND  
CALEB E. MASON, ASSISTANT UNITED STATES ATTORNEY:

**PLEASE TAKE NOTICE** that, on July 25, 2008, at 1:30 p.m., or as soon thereafter as counsel may be heard, the defendant, Salvador Ramirez-Quebedo, by and through his counsel, Michelle Betancourt and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the motions listed below.

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**MOTIONS**

Salvador Ramirez-Quebedo, the defendant in this case, by and through his attorneys, Michelle Betancourt, and Federal Defenders of San Diego, Inc., pursuant to the Fourth, Fifth and Sixth Amendments to the United States Constitution, Fed. R. Crim. P. 12, 16 and 26, and all other applicable statutes, case law and local rules, hereby moves this Court for an order to:

- 1) Compel discovery; and
- 2) Grant leave to file further motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, and any and all other materials that may come to this Court's attention at the time of the hearing on these motions.

Respectfully submitted,

Dated: July 11, 2008

s/ Michelle Betancourt  
**MICHELLE BETANCOURT**  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Salvador Ramirez-Quebedo

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UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 (HONORABLE JANIS L. SAMMARTINO)

UNITED STATES OF AMERICA,	)	CASE NO. 08CR2123-JLS
	)	
Plaintiff,	)	
	)	
v.	)	STATEMENT OF FACTS AND
	)	MEMORANDUM OF POINTS AND
SALVADOR RAMIREZ-QUEBEDO,	)	AUTHORITIES IN SUPPORT OF
	)	<u>DEFENDANT'S MOTIONS</u>
Defendant.	)	
	)	

**I.**

**STATEMENT OF FACTS**

To date, Mr. Ramirez-Quebedo has 47 pages of discovery from the government. Mr. Ramirez-Quebedo has not had an opportunity to review the A-file. On June 25, 2008, an indictment was filed charging Mr. Ramirez-Quebedo with one count of violating 8 U.S.C. section 1326(a) -attempted entry after deportation.

**II.**

**MOTION TO COMPEL FURTHER DISCOVERY/PRESERVE EVIDENCE**

**A. Mr. Ramirez-Quebedo Is Entitled To Discovery Of His Statements.**

Pursuant to Rule 16(a)(1)(A), Brady v. Maryland, 373 U.S. 83 (1963), and the Fifth and Sixth Amendments to the United States Constitution, Mr. Ramirez-Quebedo requests disclosure of any statements, whether oral, written, or recorded made by him which are in the possession, custody, or control

1 of the government, or which by exercise of the required due diligence may become known to the  
 2 government, regardless of to whom made. This includes copies of any written or recorded statements he  
 3 made; the substance of any statements made by Mr. Ramirez-Quebedo which the government intends to  
 4 offer in evidence at trial.

5 Mr. Ramirez-Quebedo also specifically requests that all arrest reports generated by the Border Patrol  
 6 or the Immigration and Naturalization Service which relate to the circumstances surrounding his arrest or  
 7 any questioning, if such reports have not already been produced in their entirety, be turned over to him. This  
 8 request includes, but is not limited to, **any rough notes, records, recordings (audio or visual), reports,**  
 9 **transcripts or other documents in which statements of Mr. Ramirez-Quebedo are contained.** It also  
 10 includes the substance of any oral statements which the government intends to introduce at trial, and any  
 11 written summaries of the defendant's oral statements contained in the handwritten notes of the government  
 12 agent. This is all discoverable under Fed. R. Crim. P. 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83  
 13 (1963). See also United States v. Johnson, 525 F.2d 999 (2d Cir. 1975); United States v. Lewis, 511 F.2d  
 14 798 (D.C. Cir. 1975); United States v. Pilnick, 267 F. Supp. 791 (S.D.N.Y. 1967); Loux v. United States,  
 15 389 F.2d 911 (9th Cir.), cert. denied, 393 U.S. 867 (1968).

16 Mr. Ramirez-Quebedo also requests any response to any Miranda warnings which may have been  
 17 given to him by either the Border Patrol or by the INS, on the date of his arrest. See United States v.  
 18 McElroy, 697 F.2d 459 (2d Cir. 1982).

19 **B. Prior Convictions Or Prior Similar Acts.**

20 Rule 16(a)(1)(B) of the Federal Rule of Criminal Procedure, provides that "upon request of the  
 21 defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as  
 22 is within the possession, custody, or control of the government . . . ."

23 **1. Past Arrests and Convictions.**

24 Mr. Ramirez-Quebedo requests all evidence, documents, records of judgments and convictions,  
 25 photographs and tangible evidence, and information pertaining to any prior arrests and convictions.  
 26 Specifically, Mr. Ramirez-Quebedo requests:

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– all documents and tapes relating to *any deportation*, including the warrant of deportation, the order to show cause, and the order of deportation.<sup>1</sup>

Additionally, Mr. Ramirez-Quebedo requests the right to review his “A-file” at the earliest convenience of the Government.

## **2. Prior Similar Acts.**

Evidence of prior similar acts is discoverable under Fed. R. Crim. P. 16(a)(1)(C) and Fed. R. Evid. 404(b) and 609. Mr. Ramirez-Quebedo requests the government be ordered to provide discovery of any prior similar acts which the government intends to introduce into evidence pursuant to Fed. R. Evid. 404(b). Mr. Ramirez-Quebedo must have access to this information in order to make appropriate motions to exclude the use of such evidence at trial. See United States v. Cook, 608 F.2d 1175 (9th Cir. 1979), cert. denied, 444 U.S. 1034 (1980).

In addition, Mr. Ramirez-Quebedo expressly requests a pre-trial conference to resolve any issues raised by the government's intention of introducing evidence pursuant to Fed. R. Evid. 404 and 609.

## **C. Mr. Ramirez-Quebedo Is Entitled To Examine The Evidence The Government Intends To Rely Upon At Trial.**

Rule 16(a)(1)(C) authorizes Mr. Ramirez-Quebedo to inspect and copy or photograph all books, papers, documents, photographs, and tangible objects which are in the possession, custody or control of the government and which are material to the preparation of the defense or intended for use by the government as evidence in it case during trial.

## **1. Evidence Seized.**

Specifically, Mr. Ramirez-Quebedo requests the opportunity to inspect and photograph all evidence seized from Mr. Ramirez-Quebedo’ person and clothing as well as all fingerprint analysis done on any of the evidence in this case, all identification procedures utilized by the government agents, as well as any vehicles which may be involved.

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<sup>1</sup> Mr. Ramirez-Quebedo contends that because the government has not alleged a particular deportation in the indictment as a predicate to § 1326 prosecution, he should thus be entitled to discovery on *any* deportation that the government may raise.

1 Mr. Ramirez-Quebedo requests all evidence seized as a result of any search, either warrantless or  
 2 with a warrant, in this case. This is available under Fed. R. Crim. P. 16(a)(1)(C); and any books, papers,  
 3 documents, photographs, tangible objects, or copies or portions thereof which the government intends to use  
 4 as evidence-in-chief at trial.

## 5 **2. Government Reports, Memos and/or Tapes.**

6 Mr. Ramirez-Quebedo requests all arrest reports, investigator's notes, memos from arresting officers,  
 7 dispatch tapes, sworn statements, and prosecution reports pertaining to Mr. Ramirez-Quebedo and available  
 8 under Fed. R. Crim. P. 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I). Mr. Ramirez-Quebedo  
 9 specifically requests that all dispatch tapes or any other audio or visual tape recordings which exist and  
 10 which relate in any way to his case and or his arrest be preserved and provided in their entirety.

11 Specifically, Mr. Ramirez-Quebedo requests a copy of the audiotape of *any* deportation hearing, as  
 12 well as a transcript of any such proceeding.

## 13 **3. All Other Documents and Tangible Objects.**

14 Mr. Ramirez-Quebedo requests all other documents and tangible objects, including clothing, notes,  
 15 books, papers, documents, photographs, and copies of any such items which were obtained from or belong  
 16 to Mr. Ramirez-Quebedo, or which are discovered.

## 17 **D. Mr. Ramirez-Quebedo Is Entitled To All Evidence Tending To Affect The Credibility Of The** 18 **Prosecution's Case.**

19 Pursuant to Brady v. Maryland, 373 U.S. 383 (1963), United States v. Agurs, 427 U.S. 97 (1976),  
 20 and Giglio v. United States, 405 U.S. 150 (1972), Mr. Ramirez-Quebedo requests the Court order the  
 21 government to immediately disclose all evidence in its possession favorable to Mr. Ramirez-Quebedo on  
 22 the  
 23 issue of guilt and which tends to affect the credibility of the prosecution's case. This request specifically  
 24 includes any impeaching evidence such as the prior records, of any material witnesses in this case. This  
 25 request also includes any expressed or implied promises made by the government to any material witnesses  
 26 in exchange for their testimony in this case. See, e.g., United States v. Bagley, 105 S. Ct. 3375 (1985);  
 27 Napue v. Illinois, 360 U.S. 264 (1959); United States v. Gerard, 491 F.2d 1300 (9th Cir. 1974).

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1 The defense requests any and all evidence including but not limited to:

2 (1) any evidence that any prospective government witness is biased or prejudiced against the  
3 defendant, or has a motive to falsify or distort his or her testimony. Pennsylvania v. Ritchie, 480 U.S. 39  
4 (1987); United States v. Strifler, 851 F.2d 1197 (9th Cir.), cert. denied, 489 U.S. 1032 (1988); United States  
5 v. Brumel-Alvarez, 991 F.2d 1452 (9th Cir. 1993) (Ninth Circuit Court reversed Judge Gilliam for failure  
6 to turn over the "Levine Memorandum" which contained information critical about a government witness);

7 (2) any evidence that any prospective government witness has engaged in any criminal act whether  
8 or not resulting in a conviction. See Rule 608(b), Federal Rules of Evidence and Brady; any evidence that  
9 any prospective witness is under investigation by federal, state or local authorities for any criminal conduct.  
10 United States v. Chitty, 760 F.2d 425 (2d Cir.), cert. denied, 474 U.S. 945 (1985);

11 (3) any evidence, including any medical or psychiatric report or evaluation, tending to show that any  
12 prospective witness's ability to perceive, remember, communicate, or tell the truth is impaired; and any  
13 evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic.  
14 United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 224 (4th  
15 Cir. 1980);

16 (4) the name and last known address of each prospective government witness. See United States  
17 v. Napue, 834 F.2d 1311 (7th Cir. 1987); United States v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure to  
18 interview government witnesses by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181 (9th  
19 Cir. 1979) (defense has equal right to talk to witnesses).

20 (5) the name and last known address of every witness to the crime or crimes charged (or any of the  
21 overt acts committed in furtherance thereof) who will not be called as a government witness. United States  
22 v. Cadet, 727 F.2d, 1453 (9th Cir. 1984);

23 (6) the name of any witness who made an arguably favorable statement concerning the defendant or  
24 who could not identify him or who was unsure of his identity, or participation in the crime charged. Jackson  
25 v. Wainwright, 390 F.2d 288 (5th Cir. 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th Cir. 1980);  
26 Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir.), cert. denied, 439 U.S. 883 (1978); Hudson v. Blackburn, 601  
27 F.2d 785 (5th Cir. 1979), cert. denied, 444 U.S. 1086 (1980).

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1 **E. Mr. Ramirez-Quebedo is Entitled To Any Information That May Result In A Lower Sentence**  
2 **Under The Guidelines.**

3 This information is discoverable under Brady v. Maryland, 373 U.S. 83 (1963). This request  
4 includes any cooperation or attempted cooperation by the defendant, as well as any information that could  
5 affect any base offense level or specific offense characteristic under Chapter Two of the Guidelines. Also  
6 included in this request is any information relevant to a Chapter Three adjustment, a determination of the  
7 defendant's criminal history, or any other application of the Guidelines;

8 **F. The Defense Requests The Preservation Of All Evidence.**

9 Mr. Ramirez-Quebedo specifically requests that all tapes or any other physical evidence that may be  
10 destroyed, lost, or otherwise put out of the possession, custody, or care of the government and which relate  
11 to the arrest or the events leading to the arrest in this case be preserved. This request includes, but is not  
12 limited to, any samples (including but not limited to blood, urine, or narcotics) used to run any scientific  
13 tests, and any evidence seized from any third party.

14 It is also requested that the government be ordered to question all the agencies and individuals  
15 involved in the prosecution and investigation of this case to determine if such evidence exists, and if it does  
16 exist, to inform those parties to preserve any such evidence;

17 **G. The Defense Requests All Jencks Material.**

18 The defense requests all material to which Mr. Ramirez-Quebedo is entitled pursuant to the Jencks  
19 Act, 18 U.S.C. § 3500, reasonably in advance of trial, including audio and visual tape recordings, such as  
20 dispatch tapes. A verbal acknowledgment that "rough" notes constitute an accurate account of the witness'  
21 interview is sufficient for the report or notes to qualify as a statement under §3500(e)(1). Campbell v.  
22 United States, 373 U.S. 487, 490-92 (1963). In United States v. Boshell, 952 F.2d 1101 (9th Cir. 1991) the  
23 Ninth Circuit held that when an agent goes over interview notes with the subject of the interview, the notes  
24 are then subject to the Jencks Act.

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1 **H. Mr. Ramirez-Quebedo Requests All The Personnel Records Of Government Officers Involved**  
2 **In The Arrest.**

3 Mr. Ramirez-Quebedo requests all citizen complaints and other related internal affairs documents  
4 involving any law enforcement officers who were involved in the investigation, arrest, and interrogation  
5 of him, pursuant to Pitchess v. Superior Court, 11 Cal. 3d 531, 539 (1974). Because of the sensitive nature  
6 of these documents, defense counsel is unable to secure them from any other source.

7 **III.**

8 **Mr. Ramirez-Quebedo REQUESTS LEAVE TO FILE FURTHER MOTIONS**

9 To date, Mr. Ramirez-Quebedo and defense counsel have received 47 pages of discovery from the  
10 government. As new information comes to light, the defense may find it necessary to file further motions.  
11 Mr. Ramirez-Quebedo hereby requests leave to do so.

12 **IV.**

13 **CONCLUSION**

14 For the reasons stated above, Mr. Ramirez-Quebedo respectfully requests that this Court grant the  
15 foregoing motions.

16 Respectfully submitted,

17 *s/ Michelle Betancourt*

18 Dated: July 11, 2008

**MICHELLE BETANCOURT**

Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Ramirez-Quebedo

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6 Attorneys for Mr. Ramirez-Quebedo  
7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,	)	Case No. 08CR2123-JLS
12 Plaintiff,	)	
13 v.	)	PROOF OF SERVICE
14 SALVADOR RAMIREZ-QUEBEDO,	)	
15 Defendant.	)	

16

17 Counsel for Defendant certifies that the foregoing pleading is true and accurate to the  
18 best of her information and belief, and that a copy of the foregoing document has been served via  
19 CM/ECF this day upon:

20 Caleb Mason  
United States Attorney  
21 caleb.mason@usdoj.gov; efile.dkt.gc1@usdoj.gov  
22

23 Dated: July 11, 2008

s/ Michelle Betancourt  
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